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SUBJECT: ETHIOPIA: PROSECUTION STEPS UP EVIDENCE IN CUD
TRIAL

REF: ADDIS ABABA 1788

11. (SBU) SUMMARY: The prosecution has completed the presentation of audiocassettes and most written evidence in the case against detained opposition Coalition for Unity and Democracy (CUD) leaders, independent journalists and civil society representatives. In contrast to the previously presented video evidence (reftel), audio evidence focused on several quotes by defendants in radio interviews that were notably more hardline in their tone and suggestion, including assurances by Hailu Shawel that the Ethiopian military would not follow orders to fire upon demonstrators. The prosecution was unable to follow-up this strengthening of evidence in its presentation of written documentation. Though it included a CUD 'hit list' of top GoE officials, a CUD plan to supply supporters with munitions, and the intention to cooperate with the Eritrean government, these documents were unsubstantiated in court. Following the presentation of the written evidence, the trial will turn to the witness stage, though it is unclear whether this will occur before the trial breaks for summer recess. END SUMMARY.

12. (SBU) International observers continue to attend all sessions. Michael Ellman, a British human rights attorney contracted by the European Union, has attended the trial since February, but will soon depart Ethiopia and be replaced by another, yet unnamed, European observer. Upon his departure, Ellman will issue an interim report on the progress of the trial. The rotation of Lawyers Without Borders (LWOB) representatives continues; the third set of visiting legal observers departed Addis Ababa on July 14. In a meeting with the Charge on July 12, LWOB representative Edward Turner, who comes from the Hong Kong office of the law firm Shearman & Sterling, feels that the audiocassettes indicate the government has a judicial case. He inquired whether LWOB's presence at the trial was helpful to Post; Charge affirmed that it was. It appears that LWOB will maintain a presence throughout the duration of the trial.

DEFENDANTS MORE VOCAL ABOUT PRISON CONDITIONS

13. (U) Defendants who attend the trial appear to be in good health, but others continue to miss court appearances due to illness. Notably, Maj. Getachew Mengiste has yet to return following surgery in June. Pregnant journalist Serkalem Fassil has also been out for an extended period following delivery of her baby. Though she is reported to be in stable condition, the local press has reported that her baby is not

receiving necessary specialized medical care, as both parents are in prison.

¶4. (U) On July 11, mayor-elect Berhanu Nega, who had previously been hospitalized (reftel), addressed the bench to say he and 16 other defendants were being held with 250 other prisoners in a cell made of corrugated metal, which leaks from the frequent rains and had very little ventilation or light. This was particularly a problem for him, he said, as his discharging physician had recommended that he not be kept in damp and dusty conditions due to his poor respiratory condition. Despite these orders from the hospital and requests to prison officials, he was not moved. He requested that the court intervene, threatening that "when people start getting sick, it will be the court's fault." Though the court does not technically have jurisdiction over the prison administration, the bench ordered that Berhanu be moved to a more appropriate facility for his health condition, and announced that at the next court session it would rule further on the conditions under which the prisoners were being kept. As of July 14, Berhanu had not been moved. The court promised to rule on the matter in the next session. (NOTE: The court ruled July 19 that Berhanu "be put in an area that is not damp and dusty." END NOTE.) Amnesty International subsequently issued a public appeal noting Berhanu's "potentially life-threatening" health condition.

AUDIOCASSETTES REVEAL A FIERY HAILU SHAWEL

¶5. (U) On June 29 and July 3, the prosecution presented the audiocassette phase of its case. Though the prosecution had

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initially submitted eleven cassettes as evidence, it ultimately decided to present only one, stating that the other 10 were redundant. However, as was the case in the video stage, the prosecutor subsequently introduced an additional audiocassette, which contained sound bites. These came from a number of radio interviews, primarily with Hailu Shawel, but also included Abayneh Berhanu and a number of defendants being tried in absentia. Whereas the court had disallowed the introduction of the additional video that contained clips of the most damning evidence (reftel), it allowed prosecutors to present this additional audiocassette.

¶6. (U) The only audiocassette that was presented from the original eleven submitted featured an October 5, 2005, interview of Hailu Shawel by co-defendant Tinsae Ethiopia Radio interviewer Dawit Kebede. The prosecutor stated that this cassette demonstrated that the CUD was "plotting to dismantle the constitutional order and to provoke illegal violence, and threatening to dissolve the government by force." The content of this interview was largely similar to what was presented in much of the video phase of the trial, with Hailu stating that, "the vote of the people must be respected," that "they (the people) did not need us (the opposition) to tell them what to do," that "a coup d'etat is illegal; we will win through peaceful struggle, not through arms," and that "peaceful struggle is long but leads to victory."

¶7. (SBU) In the additional cassette submitted by the prosecution, the prosecutor did not outline what the cassette proved, but the clips from the interviews that were played contained statements by Hailu Shawel that were significantly stronger than was heard in either the videocassettes or the previous audiocassette. In these interviews given to local and international media, Hailu made repeated calls for the establishment of a "provisional government," for removal of "the oppressive regime," and suggested attempts to subvert the military, saying "those elements who are carrying arms to stand by our side," and that "the soldiers are the army of the people," which do not "create a problem for the opposition." He also stated that, "When the hard days come,

we believe the army will not stand by the side of few dictators. It shall stand by our side." He followed this by saying, "The army understands the situation even if it is commanded by the few individuals to shoot straight at the people. We believe they will not obey their orders." He closed this interview by stating, "Above all there are armed militias in the villages. We would like to advise them not to support the dictatorial regime and endanger the lives of the people. Because at the end they will not avoid the judgment of history." The full interviews were not presented, but the language used by Hailu could be interpreted as calling for a long-term struggle to overthrow the current government. The most concrete evidence presented, however, was of Yared Tibeđu, a defendant being tried in absentia, who states that "(the CUD) have a mighty force (with whom they) can stand together in solidarity... the Eritrean people," that "we have not been able to change this racist government in a peaceful way, and we have to sit down and design alternative strategies," and that "we can make (the GoE) understand that they can be toppled in the same manner they came to ... power."

WRITTEN EVIDENCE EXPLAINED, BY PROSECUTION

18. (U) Following the close of the audiocassette phase of the prosecution's case, the prosecutor presented documentary evidence. At the start of the trial, the prosecutor originally presented a package of 91 documents constituting the written evidence against the defendants. Judges agreed to the prosecution's request to present only a summary of the documents (rather than the entire text of all the documents) to the court, as well as to the prosecution's request to submit new documentary evidence allegedly discovered since the beginning of the trial. (NOTE: According to the judge, prosecutors must submit written evidence to the court, but do not necessarily have to present such evidence to defendants. END NOTE.) Consistent with the ruling on the audiocassettes, the bench allowed this new evidence to be presented. Prosecutors have not yet presented this additional written evidence, but are expected to do so July 19, before the

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prosecution moves to the witness stage of evidence.

19. (U) Most of the 91 originally submitted written documents were press releases issued by the CUD party or interviews with party leaders. There were also a number of articles and editorials that were presented against journalists, newspapers, and publishers. On the surface, the strongest evidence appeared to be a "top secret list of TPLF/EPRDF party members to be eliminated," which was reportedly found in the home of Eng. Gizachew, as well as an "Agenda" that stated that the CUD would "supply grenades (and other munitions) to members and will cooperate with the Eritrean government." The prosecutor presented this evidence by reading aloud an explanation of each of the documents: what they contained, what the prosecution claimed they proved, and to which defendants they pertained. This was accompanied by an overhead presentation of the "explanations," with handouts for the defendants and international observers. Though copies of the actual documents were presented to the judges and defendants in January, they were not shown in court. As the presentation was limited to prosecutors, explanations, it is difficult to determine the quality of the evidence. For example, in a press release, the CUD called on the public to "stand by the constitution," which the prosecutor said shows the CUD "calling on the public to take measures against the government." In another press release the CUD states that "as we proceed from one (government) system to another, the oppression gets stronger," which the prosecutor explained shows that the CUD "instigated the public not to peacefully accept a transfer of power." In another example, when a document stated that "the election failed to bring about a democratic system," the prosecutor claimed it shows that the

CUD "wanted to overthrow the government with force." Most of the explanations were similar. At one point the lead prosecutor summarized several CUD press releases by saying, "In nearly every speech they say they support peaceful struggle, but essentially they are promoting violence."

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EVIDENCE IMPROVES, BUT STILL SHY OF SOLID PROOF
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¶10. (SBU) COMMENT: The evidence that the prosecution presented in the audiocassette phase was significantly more damaging than what had been seen or heard to that point in the trial. Though the only defendant in Ethiopia to which it applied is Hailu Shawel (and was not in and of itself necessarily incriminating against him), it does indicate that the government has a case against Hailu Shawel -- whether it is sufficient to convict is an issue for the courts. The written evidence was largely unconvincing, though a few documents, if genuine, would by themselves present strong evidence. As the trial approaches what will likely be a summer recess (Post recently granted the lead judge a non-immigrant visa to travel to the United States at the end of July), it is unclear whether the prosecution will be prepared to begin the witness phase of the trial. As the break nears, the defendants have also become more vocal in their complaints about prison conditions. Without opportunities for frequent trips out of the prison for court appearances (and regular attention by international observers), the poor health conditions of some of the defendants may be exacerbated. END COMMENT.
HUDDLESTON